

ORDINANCE NO. O-5-07

AN ORDINANCE TO REZONE 1.2099 ACRES OF LAND,  
CURRENTLY KNOWN AS LOT P-87, THE DUANE PROPERTY, LOCATED OFF  
OLD GAME PRESERVE ROAD BETWEEN ARROWSMITH COURT AND TRAVIS  
AVENUE IN THE CITY OF GAITHERSBURG, FROM THE EXISTING C-2  
(GENERAL COMMERCIAL) ZONE TO THE E-1 (URBAN EMPLOYMENT) ZONE,  
UNDER THE OPTIONAL METHOD OF REZONING, IN ACCORDANCE WITH §24-  
196 (MAP AMENDMENTS) AND §24-198 (OPTIONAL METHOD) OF THE CITY  
CODE

**Z-303(o)**

BE IT ORDAINED, by the Mayor and Council of the City of Gaithersburg, in public meeting assembled, that they find the following facts from the evidence of record in Zoning Map Amendment Application Z-303(o):

A. The application Z-303(o), filed by Jody Kline, of Miller, Miller, and Canby, for Travis Avenue Self Storage LLC, requests that 1.2099 acres of land, currently known as Lot P-87, the Duane Property, be rezoned from the C-2 (General Commercial) Zone to the E-1 (Urban Employment) Zone.

B. The applicant further requests the rezoning to the E-1 Zone be accomplished under the optional method of application for local map amendments. This approach requires the submission of a schematic development plan with elements required by §24-198(a) and a covenant detailing the restriction of uses and/or development standards per §24-198(b) as part of the rezoning application. The schematic development plan is for the purpose of limiting a development standard or standards to less than the maximum permitted in the requested zone and/or limiting the land use of the applicant's subject property to one or more of the permitted uses in the zone. The covenant detailing the restriction of use and/or development standards, after recordation in the County Land Records, will be in effect until such time as the property is rezoned.

C. The schematic development plan, including the site plan, landscape plan, and architectural elevations, proposes a 100,000-square foot, four-story building for a use listed in the Declaration of Covenants. The Declaration of Covenants proposes the following:

1. Buildings to be constructed on the Subject Property shall provide not less than the following setbacks for yards:

Front yard: thirty-seven (37') feet  
Side yard: thirty (30') feet  
Rear yard: thirty (30') feet

2. Use of the Subject Property shall be restricted to the following:

- a. Warehousing, storage and distribution facility
- b. Offices accessory to the principal use.
- c. Research, experimental and testing laboratories.
- d. Telecommunications facilities for rooftop mounted cellular telephone antennas
- e. Residence for caretaker accessory to the principal use

D. The Mayor and City Council and the Planning Commission conducted a joint public hearing on September 18, 2006. At the public hearing, in addition to the testimony of the applicant and the project team, testimony was received from interested and affected parties. Since the joint public hearing, no additional testimony, either for or against the proposal, was received. The Planning Commission's record closed on January 10, 2007. The Commission made its recommendation on January 15, 2007, and forwarded their recommendation of approval to the Mayor and City Council for Z-303(o). The Mayor and City Council closed their record on February 14, 2007.

E. On February 20, 2007, during their policy discussion meeting, the City Council carefully reviewed the evidence of record and considered all submitted testimony, documents and correspondence presented, along with the Planning Commission's recommendation for approval, and made the following findings with respect to Application Z-303(o).

1. The neighborhood is the area described and delineated, by the Applicant, in the record, exhibit number 103.

2. The change in the neighborhood is demonstrated in the zoning and master plan history. The property was originally zoned R-A (Low Density Residential) Zone as part of annexation X-112. The rezoning of P-87 to the current C-2 Zone occurred as part of the Comprehensive Rezoning (O-15-86) associated with Zoning Map Amendment application Z-250 (implementing the commercial land use recommendations of the 1986 Neighborhood Six Plan). The City changed the land use designation, for the Subject Property, in the 2003 Land Use Master Plan to industrial-research-office; similar to the properties to the north and west. This change in the land use recommendation recognized the difficulty of developing the subject property with commercial uses.

3. The location of this parcel, visibly removed and not easily accessed from Maryland route 355, is not conducive to the purpose of the current C-2 zone. The purpose of the C-2 Zone is "meant to include commercial uses serving the regional and local area, together with normal supplemental uses and other uses compatible with a cohesive and attractive shopping and office area" (§24-116).

4. The rezoning would comply with the adopted 2003 City Land Use Master Plan, which recommends that this parcel be developed as industrial-research-office, similar to the existing properties and use to the north and west of the parcel. The Land Use Designation recommended by the Master Plan is facilitated by a rezoning of the Subject Property.

5. The current 2003 Master Plan land use recommendation of "Industrial" can only be achieved through the requested rezoning to the E-1 classification by correcting an error in the Master Plan recommended rezoning. The recommended I-3 Zone cannot be mapped on the Subject Property because the property does not meet the minimum acreage requirements (two acres), established by §24-145, for the I-3 zone.

6. The proposed covenant and restricted uses in the Declaration of Covenants are compatible with the existing warehouse type uses to the north and west.

7. The proposed E-1 zoning and restricted uses provide a more sensitive response to the concerns of the nearby residential communities because of the lower number of allowable uses and lesser densities of these uses than those uses and densities permitted in the C-2 Zone.

F. Based upon the evidence of the record, the City Council makes the following findings in regards to the schematic development plan for Z-303(o), Parcel P-87:

1. The proposed schematic development plan will provide a comprehensive and systematic development of the City as the proposed self-storage use complies with the 2003 City Land Use Master Plan recommended land use for parcel P-87 and will place a functional building on a dormant and under maintained parcel.

2. The proposed schematic development plan does not adversely affect the health or safety of persons residing or working in the area as the plan includes proposed paving and storm water management improvements to Old Game Preserve Road that will increase safety for both pedestrians and vehicles by providing sidewalks; creating adequate paving width for the conveyance of vehicles, including emergency services vehicles; and diverting excess precipitation from standing on the road.

3. The approval of this schematic development plan will not be detrimental to the public welfare or adversely affect the use or development of adjacent or surrounding properties, because the use will cause no impact on public education facilities, the traffic to be generated by the proposed use will be less than many permitted C-2 uses which generally are heavier traffic generators, and the subject property can be readily served by public sewers and water facilities.

4. The proposed schematic development plan will not be incompatible or inharmonious with the other existing uses or with existing and proposed adjacent development: the proposed use will be consistent with the existing commercial uses currently found in the neighborhood and the low intensity use will not adversely impact the neighboring residential land uses.

5. The proposed schematic development plan will not be inharmonious or inconsistent with the environmental standards of the City. The proposed plan will improve storm water management; will incorporate sustainable design elements; and will provide improved habitat by creating a high grade forest in the conservation areas.

For the reasons stated above, rezoning application Z-303(o) is granted and the accompanying schematic development plan and Declaration of Covenants are approved subject to the following conditions:

1. Applicant is to record the Covenant for Z-303(o) in the Land Records of Montgomery County prior to the submission of Final Record Plats;
2. Applicant is to execute the PEPCO land purchase for additional Old Game Preserve Road right-of-way and improvements and dedicate said portion of road to the City of Gaithersburg by the recordation of Final Record Plats;
3. Applicant is to complete off-site road improvements to the City maintained portion of Old Game Preserve Road prior to the issuance of Occupancy Permits;
4. Applicant is to complete off-site storm water management improvements to the Montgomery County maintained portion of Old Game Preserve Road prior to the issuance of Occupancy Permits.

ADOPTED by the City Council this 20<sup>th</sup> day of February, 2007.

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SIDNEY A. KATZ, MAYOR and  
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this 20th day of February, 2007. APPROVED by the Mayor of the City of Gaithersburg, this 20th day of February, 2007.

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SIDNEY A. KATZ, MAYOR

THIS IS TO CERTIFY that the foregoing Ordinance was adopted by the Mayor and Council of the City of Gaithersburg, in public meeting assembled, on the 20th day of February, 2007, and that the same was approved by the Mayor of the City of Gaithersburg on the 20th day of February, 2007. This Ordinance will become effective on the 12<sup>th</sup> day of March, 2007.

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David B. Humpton, City Manager